

**OFFICE OF ATTORNEY GENERAL**

On June 28, 2001, Highlander, Inc. was the holder of a state alcoholic beverage license permitting the sale of alcoholic beverages at retail from the premises of the Highlander Bottle Shop and Lounge.

On June 28, 2001, the licensee, acting by and through an employee and agent of the licensee, sold alcohol, did dispense alcoholic beverages to a person under the age of 21 years.

### **COMMENTARY ON FINDINGS OF FACT**

There is no doubt that an employee of the Highlander dispensed or sold alcoholic beverages to a minor on the premises of the Highlander on June 28, 2001. This is not the first time that the Highlander has been discovered selling to minors.

In 2000, the City of Grand Forks began an alcoholic beverage compliance program that includes underage alcohol compliance checks on randomly selected Grand Forks businesses (alcoholic beverage licensees). On December 8, 2000, the coordinator of the program sent a letter to the Highlander and other Grand Forks businesses that it was going to begin compliance checks to enforce the alcoholic beverage laws in Grand Forks. Exhibit 5. On December 28, 2000, an employee of the Highlander sold alcoholic beverages to a person under the age of 21 years. As part of the compliance program, the coordinator then notified the Highlander by letter that it had failed a compliance check. Exhibit 4. The letter was, in essence, a warning letter. No criminal or administrative action was taken against the Highlander or its agents or employees. However, the Highlander's employees were offered training about the alcoholic beverage laws and ID training. *Id.* On March 9, 2001, Highlander was again checked under the compliance program and informed by letter from the coordinator that it passed. Exhibit 7.

On May 7, 2001, the coordinator of the alcoholic beverage compliance program wrote to the Highlander and all of the alcoholic beverage licensees in Grand Forks informing them of the completion of phase one of the program and the implementation of phase 2. This letter informed the licensees that in phase 2, any failure to obey the alcoholic beverage laws would no longer

result in a warning letter but would result in prosecution under the law of both the establishment and the person actually selling the alcoholic beverage. Exhibit 6.

On June 28, 2001, an employee of the Highlander again sold alcoholic beverages to a minor. No warning letter was issued to the Highlander. The Highlander employee who sold the alcoholic beverages to the minor was prosecuted criminally and the City of Grand Forks forwarded to the Attorney General an Affidavit Requesting Hearing on Alleged Violations for pursuing administrative action against the state alcoholic beverage license of Highlander, Inc.

At the hearing on this matter against Highlander, Inc., both Mr. and Ms. McDonald testified. Although neither denied either the December 28 or the June 28 incidents, they did object to administrative action being taken against the license. They said that their objection was based on the fact that the Highlander does not serve minors, that the staff is properly trained, and that these incidents, especially the later one, were simply errors that happened under unusual circumstances. Clearly, at least one of the representatives of Highlander, Inc. does not like "sting operations." The alcohol compliance program is considered by the Highlander to be sneak tactics.

On the contrary, the evidence shows that the Grand Forks alcoholic beverage compliance program is not sneak tactics. It is an open, public operation, deliberately accomplished with deliberate methodology. Its intent is to make alcoholic beverage licensees aware of problems regarding violations of the law relating to alcoholic beverage sales, especially sales to minors, to educate them about the problems and about how to handle them, and then to enforce subsequent violations of the alcoholic beverage law. It is a very straight forward program. Ample notice was given to all Grand Forks businesses involved, including the Highlander.

Clearly, with or without such a program as operated in Grand Forks, employees and agents of a licensed alcoholic beverage establishment should be asking for identification from anyone purchasing alcoholic beverages who is anywhere close to being 21 years of age, below or above. There was testimony from both Grand Forks law enforcement and the McDonald's at the hearing that anyone whom the seller suspects is not of an age well above 21 years should be "carded."

On June 28, 2001, an employee of the Highlander sold alcoholic beverages to a person under 21 years of age, who was actually 18 years of age, and who looked to be about 17-18 years of age, and did not ask for identification from that person. It really does not matter whether the employee was busy or not or whether the employee was diverted or not (as the McDonald's allege). An excuse from the person actually doing the selling at the counter where the sale was made that the person thought that another employee had asked the purchaser for an ID is not adequate, or believable either, for that matter. Anyone selling alcoholic beverages must be certain that the purchaser is 21 years of age before selling to that person.

Alcohol compliance programs are a legitimate and effective way of deterring alcoholic beverage establishments and their employees and agents from violating the law, especially when both the establishment and the seller are dealt with for the violations under the law. In this matter, the seller was criminally prosecuted and the alcoholic beverage establishment is now being dealt with administratively.

From the foregoing findings of fact, the ALJ arrives at the following:

### **CONCLUSIONS OF LAW**

Highlander, Inc. is presently a licensed retailer of alcoholic beverages, operating under and by virtue of a state license to sell alcoholic beverages at retail, the license having been issued by the Attorney General pursuant to the provisions of N.D.C.C. ch. 5-02.

The evidence presented at the hearing shows, by the greater weight of the evidence, that the licensee, acting by and through its employee and agent, did dispense alcoholic beverages to a person under the age of 21 years, in violation of N.D.C.C. § 5-02-06.

The Attorney General has the authority, by virtue of N.D.C.C. § 5-02-11, to suspend or revoke the licensee's license to sell alcoholic beverages at retail when the violation charged in the affidavit of Complaint has been proved by the evidence presented at the hearing.

### **RECOMMENDED ORDER**

Upon the foregoing findings of fact and conclusions of law, the state retail alcoholic beverage license of Highlander, Inc. is suspended for a period of five business days, but only one business day of the suspension shall be invoked at the present time, and the actual business day of closing shall be determined by the Attorney General in his final Order.

Dated at Bismarck, North Dakota this 8th day of October, 2001.

State of North Dakota  
Wayne Stenehjem  
Attorney General

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